

## Farm Service Agency, USDA

## § 760.108

in good faith as determined in accordance with such rules and procedures as may be set by the Deputy Administrator.

### § 760.107 Socially disadvantaged, limited resource, or beginning farmer or rancher.

(a) Risk management purchase requirements, as provided in § 760.104, will be waived for a participant who, as specified in paragraphs (b)(1) through (3) of this section, is eligible to be considered a “socially disadvantaged farmer or rancher,” a “limited resource farmer or rancher,” or a “beginning farmer or rancher.”

(b) To qualify for this section as a “socially disadvantaged farmer or rancher,” “limited resource farmer or rancher,” or “beginning farmer or rancher,” participants must meet eligibility criteria as follows:

(1) A “socially disadvantaged farmer or rancher” is, for this section, a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Gender is not included as a covered group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

- (i) American Indians or Alaskan Natives,
- (ii) Asians or Asian-Americans,
- (iii) Blacks or African Americans,
- (iv) Native Hawaiians or other Pacific Islanders, and
- (v) Hispanics.

(2) A “limited resource farmer or rancher” means for this section a producer who is both:

(i) A producer whose direct or indirect gross farm sales do not exceed \$100,000 in both of the two calendar years that precede the calendar year that corresponds to the relevant program year, adjusted upwards for any general inflation since fiscal year 2004, inflation as measured using the Prices Paid by Farmer Index compiled by the National Agricultural Statistics Service (NASS), and

(ii) A producer whose total household income is at or below the national pov-

erty level for a family of four, or less than 50 percent of the county median household income for the same two calendar years referenced in paragraph (a) of this section, as determined annually using Commerce Department data. (Limited resource farmer or rancher status can be determined using a Web site available through the Limited Resource Farmer and Rancher Online Self Determination Tool through the National Resource and Conservation Service at <http://www.lrfstool.sc.egov.usda.gov/tool.asp>.)

(3) A “beginning farmer or rancher” means for this section a person or legal entity who for a program year both:

(i) Has never previously operated a farm or ranch, or who has not operated a farm or ranch in the previous 10 years, applicable to all members (shareholders, partners, beneficiaries, etc., as fits the circumstances) of an entity, and

(ii) Will have or has had for the relevant period materially and substantially participated in the operation of a farm or ranch.

(c) If a legal entity requests to be considered a “socially disadvantaged,” “limited resource,” or “beginning” farmer or rancher, at least 50 percent of the persons in the entity must in their individual capacities meet the definition as provided in paragraphs (b)(1) through (3) of this section and it must be clearly demonstrated that the entity was not formed for the purposes of avoiding the purchase requirements or formed after the deadline for the purchase requirement.

### § 760.108 Payment limitation.

(a) For 2008, no person, as defined and determined under the provisions in part 1400 of this title in effect for 2008 may receive more than:

(1) \$100,000 total for the 2008 program year under ELAP, LFP, LIP, and SURE combined or

(2) \$100,000 for the 2008 program year under TAP.

(b) For 2009 and subsequent program years, no person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this title may receive, directly or indirectly, more than:

(1) \$100,000 per program year total under ELAP, LFP, LIP, and SURE combined; or

(2) \$100,000 per program year under TAP.

(c) The Deputy Administrator may take such actions as needed, whether or not specifically provided for, to avoid a duplication of benefits under the multiple programs provided for in this part, or duplication of benefits received in other programs, and may impose such cross-program payment limitations as may be consistent with the intent of this part.

(1) FSA will review ELAP payments after the funding factor as specified in § 760.208 is determined to be 100 percent. FSA will ensure that total ELAP payments provided to a participant in a year, together with any amount provided to the same participant for the same loss as a result of any Federal crop insurance program, the Non-insured Crop Disaster Assistance Program, or any other Federal disaster program, plus the value of the commodity that was not lost, is not more than 95 percent of the value of the commodity in the absence of the loss, as estimated by FSA.

(2) [Reserved]

(d) In applying the limitation on average adjusted gross income (AGI) for 2008, an individual or entity is ineligible for payment under ELAP, LFP, LIP, SURE, and TAP if the individual's or entity's average adjusted gross income (AGI) exceeds \$2.5 million for 2007, 2006, and 2005 under the provisions in part 1400 of this title in effect for 2008.

(e) For 2009 through 2011, the average AGI limitation provisions in part 1400 of this title relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, with certain levels of average adjusted gross income (AGI) will apply under this subpart and will apply to each applicant for ELAP, LFP, LIP, SURE, and TAP. Specifically, for 2009 through 2011, a person or legal entity with an average adjusted gross non-farm income, as defined in § 1404.3 of this title, that exceeds \$500,000 will not be eligible to receive benefits under this part.

(f) The direct attribution provisions in part 1400 of this title apply to ELAP, LFP, LIP, SURE, and TAP for 2009 and subsequent years. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. Likewise, by the same method, if anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a participant to directly receive a payment under this part, then the payment to the actual payee will be reduced commensurately with that interest. For all purposes under this section, unless otherwise specified in part 1400 of this title, the AGI figure that will be relevant for a person or legal entity will be an average AGI for the three taxable years that precede the most immediately preceding complete taxable year, as determined by CCC.

[74 FR 31571, July 2, 2009, as amended at 74 FR 46673, Sept. 11, 2009]

**§ 760.109 Misrepresentation and scheme or device.**

(a) A participant who is determined to have deliberately misrepresented any fact affecting a program determination made in accordance with this part, or otherwise used a scheme or device with the intent to receive benefits for which the participant would not otherwise be entitled, will not be entitled to program payments and must refund all such payments received, plus interest as determined in accordance with part 792 of this chapter. The participant will also be denied program benefits for the immediately subsequent period of at least 2 crop years, and up to 5 crop years. Interest will run from the date of the original disbursement by FSA.

(b) A participant will refund to FSA all program payments, plus interest, as determined in accordance with part 792